

),

at

W

n
c-
n-

Subject Index.

Opinion below	1
Jurisdiction	1
Questions presented	3
Statement of the case	3
The questions are substantial	6
Conclusion	11
Appendix A, New Hampshire Revised Statutes Annotated	12
Chapter 491	12
Chapter 588	12
Appendix B, Opinion of Supreme Court of New Hampshire	23

Table of Authorities Cited.

CASES.

American Committee for Protection of Foreign Born v. Subversive Activities Control Board, 380 U.S. 513	8
Bantam Books, Inc., v. Sullivan, 372 U.S. 58	2
Barenblatt v. United States, 360 U.S. 109	9
DeGregory v. Attorney General of New Hampshire, 368 U.S. 19	4, 8, 10
Gibson v. Florida Legislative Investigation Commit- tee, 372 U.S. 539	7, 9
Jordan v. Hutcheson, 323 F. 2d 597	7
Maynard v. De Gregory, 106 N.H.; 209 A. 2d 712	1
N.A.A.C.P. v. Button, 371 U.S. 415	6
Nelson v. Wyman, 99 N.H. 33	9
Pennsylvania v. Nelson, 350 U.S. 497	7

Shelton v. United States, 327 F. 2d 601	7
Sweezy v. New Hampshire, 354 U.S. 234	7
Uphaus v. Wyman, 360 U.S. 72	7
Veterans of Abraham Lincoln Brigade v. Subversive Activities Control Board, 331 F. 2d 64	9
Veterans of Abraham Lincoln Brigade v. Subversive Activities Control Board, 380 U.S. 503	8
Watkins v. United States, 354 U.S. 178	7
Wilkinson v. United States, 365 U.S. 399	9

STATUTES.

New Hampshire Revised Statutes Annotated, c. 491	5
New Hampshire Revised Statutes Annotated, c. 588, § 8-a	2, 3, 4, 7, 10
United States Constitution, First Amendment	3, 6, 9, 11
United States Constitution, Fourth Amendment	6, 9, 11
United States Constitution, Fourteenth Amendment	3, 9, 10, 11
28 U.S.C., § 1257 (2)	1

TEXTBOOKS, ETC.

1955 Report of the Attorney General	8, 10
-------------------------------------	-------

Supreme Court of the United States.

OCTOBER TERM, 1965.

No.

HUGO DEGREGORY, *Appellant*,

v.

ATTORNEY GENERAL OF THE STATE OF
NEW HAMPSHIRE, *Appellee*.

JURISDICTIONAL STATEMENT.

Opinion Below.

This is an appeal from a decision of the Supreme Court of New Hampshire rendered on April 30, 1965. It is not yet reported in the New Hampshire Reports but will be found in volume 106, New Hampshire Reports, and 209 A. 2d 712. The New Hampshire Supreme Court affirmed a Superior Court decision which ordered the appellant committed to jail for one year for civil contempt.

Jurisdiction.

This appeal is taken pursuant to 28 U.S. Code, § 1257 (2), which provides:

“Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court as follows:

.

“(2) By appeal, where is drawn in question the validity of a statute of any state on the ground of its being repugnant to the Constitution, treaties or laws of the United States, and the decision is in favor of its validity.”

Bantam Books, Inc. v. Sullivan, 372 U.S. 58.

Notice of appeal was filed in the New Hampshire Supreme Court on May 28, 1965.

From the inception of this proceeding, appellant has raised the constitutional issues argued herein, except for the issue of unconstitutionality on its face of New Hampshire Revised Statutes Annotated, c. 588, § 8-a. Comment on that issue will be made hereinafter.

The constitutional issues here presented were raised in appellant's answer to the petition filed in the Superior Court for Merrimack County, New Hampshire (R. 12), except that, as above noted, the constitutionality on its face of the statute was not argued.

The issues were argued in a memorandum of law filed in the Superior Court.

Exception was taken to the judge's ruling that the Attorney General could properly question DeGregory (R. 139) and to the introduction of Exhibit 1 in this record (R. 155).

The issues were argued before the Supreme Court of New Hampshire (R. 31 *et seq.*) and the New Hampshire Court ruled adversely to appellant (R. 79).

Said the Court: “This exercise by the state of its power adequately to inform itself in order to act and protect its legitimate and vital interests has not been ‘pressed, in this instance, to a point where it has come into fatal collision with the overriding constitutionally protected rights’ of defendant. *Uphaus v. Wyman*, 360 U. S. 72, 81.”

Questions Presented.

The questions presented in this appeal are as follows:

1. Whether Revised Statutes Annotated, c. 588, § 8-a, as applied by the Court on the record of this case, violates due process of law under the Fourteenth Amendment to the United States Constitution by authorizing a legislative committee to summon and question the defendant herein without any legal showing of foundation, basis in fact or probable cause for conducting an investigation and for investigating the defendant.

2. Whether the decision of the Court in this case denied to defendant his right of privacy and abridged his freedom of speech and assembly under the First Amendment to the United States Constitution as guaranteed to him by the Fourteenth Amendment to said Constitution by holding that Revised Statutes Annotated, c. 588, § 8-a, authorized the Attorney General to summon and question the defendant herein without any legal showing of foundation, basis in fact or probable cause for conducting an investigation or for investigating the defendant.

3. Whether Revised Statutes Annotated, c. 588, § 8-a (chapter 178, Laws of 1957), violates due process of law under the Fourteenth Amendment to the United States Constitution by permitting a purported legislative committee, free of legislative control, and unlimited in time, to be used as a device to bestow wide judicial and legislative powers upon the Attorney General of the State of New Hampshire.

Statement of the Case.

This proceeding is brought under New Hampshire Revised Statutes Annotated, c. 588, which is the State Subversive Activities Law. Under section 8-a of that chap-

ter the Attorney General is granted authority by the Legislature to conduct an investigation in the field of subversive activities "At any time when the attorney general has information which he deems reasonable or reliable relating to violations of the provisions of this chapter."

"ATTORNEY GENERAL. At any time when the attorney general has information which he deems reasonable or reliable relating to violations of the provisions of this chapter he shall make full and complete investigation thereof and shall report to the general court the results of this investigation, together with his recommendations, if any, for legislation. In any investigation hereunder the attorney general or any duly authorized member of his staff is authorized to require by subpoena or otherwise the attendance of such witnesses and the production of such correspondence, books, papers and documents and to administer such oaths, and to take such testimony and to make such expenditures within the funds provided as he deems advisable. The provisions of section 7 of this chapter shall be inapplicable to the investigation provided for herein and the attorney general is hereby authorized to make public such information received by him, testimony given before him, and matters handled by him as he deems fit to effectuate the purposes hereof."

The previous proceeding which was decided in this Court in *DeGregory v. Attorney General of New Hampshire*, 368 U.S. 19, was terminated when DeGregory appeared in the Superior Court of New Hampshire, answered in the negative the question: "Are you presently a member of the Communist Party?" and thereupon was purged of contempt (R. 107). Within a few days the Attorney General started the present proceeding by causing a subpoena to

be served on DeGregory. A hearing was held before the Attorney General on November 22, 1963. At that time the Attorney General posed a number of questions to DeGregory and early in the proceeding the witness made the following statement:

"I would like to state, Mr. Gall, that I am not now a member of the Communist Party and have not been at any time since the authority you have cited, RSA 588:8-a: that I have no knowledge of any Communist activities in New Hampshire during this period or of any violations of RSA 588 during this period of six and one-half years. In fact, I am not even aware of the existence of a Communist Party in the state of New Hampshire at any time the authority you have cited, Section 8-a, has been on the statute books, and in view of the foregoing I do not understand what I have to face here today." (R. 91.)

Thereafter the Attorney General continued to pose questions and DeGregory raised objections and declined to answer them (R. 91-97). The Attorney General thereupon brought a petition in the Superior Court, pursuant to New Hampshire Revised Statutes Annotated, c. 491, and DeGregory filed an answer thereto, raising the constitutional objections now relied upon (R. 12). A hearing was held in the Superior Court on May 20, 1964. At that hearing DeGregory again repeated the sworn statement which he had previously made in the hearing before the Attorney General and declined to answer a series of questions which are set forth in the record of the Superior Court (R. 143, *et seq.*). The Court entered an order finding DeGregory in contempt and ordering him committed to a jail for one year or until he might purge himself, and meanwhile released him on his own recognizance (R. 169). As stated

previously, the Supreme Court of New Hampshire affirmed the decision of the lower Court and ruled that the statute on the record of the case did not contravene the New Hampshire or United States Constitutions (R. 75-82).

The Questions are Substantial.

The first and second questions involve passing on the constitutionality of the statute as applied by the New Hampshire Court on the record in this case. Due process of law, the First Amendment rights of freedom of speech and freedom to be silent, and the Fourth Amendment right to be free from unreasonable search are involved.

Two kinds of foundation or probable cause must be considered and will be touched on successively.

The first is the kind of foundation the Attorney General must have to institute an investigation.

As stated in *N.A.A.C.P. v. Button*, 371 U.S. 415, 438: "The decisions of this Court have consistently held that only a compelling state interest in the regulation of a subject within the State's constitutional power to regulate can justify limiting First Amendment freedoms."

The Attorney General was heard to argue that he really does not need any foundation at all, except some kind of unspecified probable cause (R. pp. 131, 133), and he further pointed out that the Legislature had indicated a continuing interest in the subject of subversive activities and cited New Hampshire Laws of 1961 and 1963, each of which merely provided for annual appropriations of \$2,000 (R. p. 67). It was stated in the Courts below, and not denied, that the Attorney General has made no written report to the Legislature since the report of 1955 on which he and the New Hampshire Court relied in this case as the justification of investigation (R. p. 25).

This Court needs no reminder that, in balancing First Amendment rights of an individual against the urgent necessity of the self-preservation of the state, it must be ascertained that there is such urgency as to warrant limiting the individual's rights.

Sweezy v. New Hampshire, 354 U.S. 234.

Watkins v. United States, 354 U.S. 178.

Gibson v. Florida Legislative Investigation Committee, 372 U.S. 539.

Shelton v. United States, 327 F. 2d 601 (C.A. D.C.).

Jordan v. Hutcheson, 323 F. 2d 597 (C.A. 4).

Having in mind the law as laid down in these cases, it is submitted that no requisite legislative purpose is found in the record of this case. When DeGregory made the sworn statement already quoted, he said: "I don't understand what I have to face here today." At that point the burden was on the Attorney General to state the legislative purposes of the investigation and the grounds which permitted him at that time to pursue it.

"... it must be up to the State to make some at least plausible disclosure of its lawmaking interest so that the relevance of its inquiries to it may be tested." Brennan, J., dissenting, in *Uphaus v. Wyman*, 360 U.S. 72, 105.

We are dealing here with a state investigating committee whose powers are circumscribed. *Pennsylvania v. Nelson*, 350 U.S. 497. The passing of the 1957 Act (Revised Statutes Annotated, c. 588, § 8-a) presumably implied findings of urgency by the Legislature, but such findings cannot continue forever without some further showing that the need which brought about the original statute still continues.

We would like to emphasize the difference of this proceeding and the previous proceeding between the same

parties, *DeGregory v. Attorney General of New Hampshire*, 368 U.S. 19. In the previous case only one question was involved: "Are you presently a member of the Communist Party?" There was no doubt by the very tense of the question, "Are you presently . . .," that at least the Attorney General was attempting to inquire about events and facts then current.

Compare this proceeding, where DeGregory, by his sworn statement, covered the present and the past back to the date of the passage of the statute in 1957. The continued insistence on questioning him, and the refusal to place any dates on what period the questions related to, make it plain that now the Attorney General is not seeking current information, but inquiring into events of long ago (R. 91-98).

The New Hampshire Court made it crystal clear that it relied solely on the 1955 report of the Attorney General (R. Ex. 1) as the basis for the current investigation (R. 77). At the time of its introduction in evidence (May, 1964) this report was over nine years old and most of its contents related to events even older. How long can an investigator justify going over and over evidence so old? Where is that threat to the state which alone can constitutionally justify the obvious impingement on First Amendment rights?

The New Hampshire Court stated that the nature of the Communist Party is such that it can be the subject of constant scrutiny; but first it must be shown to exist in New Hampshire, and the only evidence in the record is negative, namely DeGregory's sworn statement (R. 91).

The Attorney General's presentation has the same quality of staleness, the same lack of connection with the present day noted by this Court in *Veterans of Abraham Lincoln Brigade v. Subversive Activities Control Board*, 380 U.S. 503, and *American Committee for Protection of Foreign Born v. Subversive Activities Control Board*, 380 U.S. 513.

The New Hampshire Supreme Court cited *Nelson v. Wyman*, 99 N.H. 33, as justifying a scrutiny of the distant past (R. 79). Counsel for DeGregory discussed that case before the Superior Court (R. 119, 120), and pointed out that in that case an inquiry into events of the past was upheld only because it was ancillary to the investigation of current information.

As stated in the opinion of the Court of Appeals in *Veterans of Abraham Lincoln Brigade v. Subversive Activities Control Board*, 331 F. 2d 64, 67: "This statute is cast in the present tense. It is not designed to produce historical treatises."

It is submitted, therefore, that the state has not successfully carried its burden of showing any legislative purpose in this investigation, and that therefore the questioning of DeGregory was in violation of his First Amendment rights as guaranteed by the Fourteenth Amendment of the United States Constitution.

Turning to the other branch of foundation, probable cause or nexus, assume that this Court holds that the Attorney General on the record of this case had the right to make an investigation of subversive activities; he then had the burden of showing some basis, some probable cause for summoning appellant DeGregory to testify.

Whether appellant's right rests on a "right of privacy" under the First Amendment or other constitutional clauses, or on his right not to be subjected to unreasonable search under the Fourth Amendment, this Court has repeatedly made clear that the government, federal or state, cannot engage in "indiscriminate dragnet procedures," a phrase used in *Barenblatt v. United States*, 360 U.S. 109, 134, and in *Wilkinson v. United States*, 365 U.S. 399, 412.

Put in another way, the Court in *Gibson v. Florida Legislative Investigation Committee*, 372 U.S. 539, at 557 stated: "... an adequate foundation for inquiry must be laid

before proceeding in such a manner as will substantially intrude upon and severely curtail or inhibit constitutionally protected activities or seriously interfere with similarly protected associational rights.”

The probable cause relied on by appellee was once again the 1955 Report of the Attorney General (Ex. 1). There was also reference made to “documented sworn testimony to the effect that Hugo DeGregory had been for a long time active within the Communist Party within this state” (R. 87).

However, on repeated challenge, appellee never put a date on this alleged testimony, and never produced it (R. 87, 115, 117, 123, 133, 135, 137).

The New Hampshire Supreme Court, in its opinion, relied solely on the 1955 Report (R. 77, 79), and cited pages 204-206 of the Report. The most recent references to DeGregory in those pages were dated in 1953 and 1954, and in fact did not themselves relate to violations of Revised Statutes Annotated, c. 588.

Couple these stale and tenuous citations with the uncontradicted statement under oath by appellant (R. 143) and it becomes perfectly clear that appellee had nothing even faintly approaching probable cause or reason to believe that DeGregory had any information that the Attorney General could legitimately seek.

We have already cited authorities to show that, lacking such a nexus or foundation, the summoning and questioning of appellant was in violation of his rights as guaranteed by the Fourteenth Amendment.

In the notice of appeal the issue of unconstitutionality on its face of New Hampshire Revised Statutes Annotated, c. 588, § 8-a, was raised. This question was not argued below because the New Hampshire Court was bound by the previous case of *DeGregory v. Attorney General of New Hampshire*, 368 U.S. 19.

It is open to this Court, if it so desires, to reconsider the law. The question is submitted without argument by appellant.

Conclusion.

It is submitted, therefore, that, as a matter of due process of law and of First and Fourth Amendment rights as applied by the Fourteenth Amendment to the United States Constitution, the decision of the New Hampshire Court was plainly wrong. On the record of this case we urge that appellant cannot constitutionally be ordered to jail for refusal to answer the Attorney General's questions, and that the decision of the Court below should be reversed.

Respectfully submitted,

HOWARD S. WHITESIDE,

Attorney for HUGO DEGREGORY, Appellant.

[Appendices follow.]

Appendix A.

NEW HAMPSHIRE REVISED STATUTES ANNOTATED.

CHAPTER 491.

Section 19. PETITION. Whenever any official or board is given the power to summon witnesses and take testimony, but has not the power to punish for contempt, and any witness refuses to obey such summons either as to his appearance or as to the production of things specified in the summons, or refuses to testify or to answer any questions, a petition for an order to compel him to testify or his compliance with the summons may be filed in the Superior Court or with some justice thereof.

Section 20. PROCEDURE. Upon such petition the Court or justice shall have authority to proceed in the matter as though the original proceeding had been in the court and may make orders and impose penalties accordingly.

CHAPTER 588.

SUBVERSIVE ACTIVITIES.

588:1 DEFINITIONS. For the purpose of this chapter "organization" means an organization, corporation, company, partnership, association, trust, foundation, fund, club, society, committee, political party, or any group of persons, whether or not incorporated, permanently or temporarily associated together for joint action or advancement of views on any subject or subjects.

"Subversive organization" means any organization which engages in or advocates, abets, advises, or teaches, or a purpose of which is to engage in or advocate, abet, advise, or teach activities intended to overthrow, destroy or alter, or to assist in the overthrow, destruction or alteration of,

the constitutional form of government of the United States, or of the state of New Hampshire, or of any political subdivision of either of them, by force, or violence.

"Foreign subversive organization" means any organization directed, dominated or controlled directly or indirectly by a foreign government which engages in or advocates, abets, advises, or teaches, or a purpose of which is to engage in or to advocate, abet, advise, or teach, activities intended to overthrow, destroy, or alter, or to assist in the overthrow, destruction or alteration of the constitutional form of government of, the United States, or of the state of New Hampshire, or of any political subdivision of either of them, and to establish in place thereof any form of government the direction and control of which is to be vested in, or exercised by or under, the domination or control of any foreign government, organization, or individual; but does not and shall not be construed to mean an organization the *bona fide* purpose of which is to promote world peace by alliances or unions with other governments or world federations, unions or governments to be effected through constitutional means.

"Foreign government" means the government of any country or nation other than the government of the United States of America or one of the states thereof.

"Subversive person" means any person who commits, attempts to commit, or aids in the commission, or advocates, abets, advises or teaches, by any means any person to commit, attempt to commit or aid in the commission of any act intended to overthrow, destroy or alter, or to assist in the overthrow, destruction or alteration of, the constitutional form of the government of the United States, or of the state of New Hampshire, or any political subdivision of either of them, by force, or violence, or who is a member of a subversive organization or a foreign subversive organization.

SEDITION.

588:2 FELONIES. It shall be a felony for any person knowingly and wilfully to

(a) commit, attempt to commit, or aid in the commission of any act intended to overthrow, destroy, or alter, or to assist in the overthrow, destruction or alteration of the constitutional form of the government of the United States, or of the state of New Hampshire, or any political subdivision of either of them, by force or violence; or

(b) advocate, abet, advise or teach by any means any person to commit, attempt to commit, or assist in the commission of any such act under such circumstances as to constitute a clear and present danger to the security of the United States, or of the state of New Hampshire or of any political subdivision of either of them; or

(c) conspire with one or more persons to commit any such act; or

(d) assist in the formation or participate in the management or to contribute to the support of any subversive organization or foreign subversive organization knowing said organization to be a subversive organization or a foreign subversive organization; or

(e) destroy any books, records or files, or secrete any funds in this state of a subversive organization or a foreign subversive organization, knowing said organization to be such.

Any person who shall be convicted by a court of competent jurisdiction of violating any of the provisions of this section shall be fined not more than twenty thousand dollars, or imprisoned for not more than twenty years, or both, at the discretion of the court.

588:3 PENALTY. It shall be a felony for any person after August 1, 1951 to become, or after November 1, 1951 to remain a member of a subversive organization or a foreign

subversive organization knowing said organization to be a subversive organization or foreign subversive organization. Any person who shall be convicted by a court of competent jurisdiction of violating this section shall be fined not more than five thousand dollars, or imprisoned for not more than five years, or both, at the discretion of the court.

588:3-a EVIDENCE OF MEMBERSHIP OR PARTICIPATION. In determining membership or participation in a subversive organization or a foreign subversive organization as defined in this chapter, or knowledge of the purpose or objective of such organization, the jury, under instructions from the court, may consider evidence, if presented, as to whether the accused person to his knowledge:

- (1) Has been listed as a member in any book or any of the lists, records, correspondence, or any other document of the organization;
- (2) Has made financial contribution to the organization in dues, assessments, loans, or in any other form;
- (3) Has made himself subject to the discipline of the organization in any form whatsoever;
- (4) Has executed orders, plans, or directives of any kind of the organization;
- (5) Has acted as an agent, courier, messenger, correspondent, organizer, or in any other capacity in behalf of the organization;
- (6) Has conferred with officers or other members of the organization in behalf of any plan or enterprise of the organization;
- (7) Has been accepted as an officer or member of the organization or as one to be called upon for services by other officers or members of the organization;
- (8) Has written, spoken or in any other way communicated by signal, semaphore, sign or in any other form

of communication orders, directives, or plan of the organization;

- (9) Has prepared documents, pamphlets, leaflets, books or any other type of publication in behalf of the objectives and purposes of the organization;
- (10) Has mailed, shipped, circulated, distributed, delivered, or in any other way sent or delivered to others materials or propaganda of any kind in behalf of the organization;
- (11) Has advised, counseled or in any other way imparted information, suggestions, recommendations to officers or members of the organization or to anyone else in behalf of the objectives of the organization;
- (12) Has indicated by word, action, conduct, writing or in any other way a willingness to carry out in any manner and to any degree the plans, designs, objectives, or purposes of the organization;
- (13) Has in any other way participated in the activities, planning, actions, objectives, or purposes of the organization;
- (14) The enumeration of the above subjects of evidence on membership or participation in a subversive organization or a foreign subversive organization as above defined, shall not limit the inquiry into and consideration of any other subject of evidence on membership and participation as herein stated.

588:3-b CONSTRUCTION OF PROVISION. Nothing in the preceding section shall be construed to limit the supervisory power of the court over the admission and exclusion of evidence or over the sufficiency of the evidence as a whole.

588:4 BARRED FROM OFFICE. Any person who shall be convicted by a court of competent jurisdiction of violating any of the provisions of sections 2 and 3 of this chapter,

in addition to all other penalties therein provided, shall from the date of such conviction be barred from:

(a) holding any office, elective or appointive, or any other position of profit or trust in or employment by the government of the state of New Hampshire or of any agency thereof or of any county, municipal corporation or other political subdivision of said state;

(b) filing or standing for election to any public office in the state of New Hampshire.

588:5 DISSOLUTION OF ORGANIZATIONS. It shall be unlawful for any subversive organization or foreign subversive organization to exist or function in the state of New Hampshire and any organization which by a court of competent jurisdiction is found to have violated the provisions of this section shall be dissolved, and if it be a corporation organized and existing under the laws of the state of New Hampshire, a finding by a court of competent jurisdiction that it has violated the provisions of this section shall constitute legal cause for forfeiture of its charter and its charter shall be forfeited, and all funds, books, records and files of every kind and all other property of any organization found to have violated the provisions of this section shall be seized by and for the state of New Hampshire, the funds to be deposited in the state treasury and the books, records, files and other property to be turned over to the attorney general of New Hampshire.

588:6 ASSISTANCE FURNISHED. For the collection of any evidence and information referred to in this chapter, the attorney general is hereby directed to call upon the superintendent of the state police, and county and municipal police authorities of the state to furnish him such assistance as may from time to time be required. Such police authorities are directed to furnish information and assistance as may be from time to time so requested. The attorney general may testify before any grand jury as to matters re-

ferred to in this chapter as to which he may have information.

588:7 RECORDS. The attorney general shall maintain complete records of all information received by him and all matters handled by him under the requirements of this chapter. Such records as may reflect on the loyalty of any resident of this state shall not be made public nor divulged to any person except with the permission of the attorney general to effectuate the purposes thereof.

588:8 GRAND JURY INQUIRIES. The superior court, when in its discretion it appears appropriate, or when informed by the attorney general that there is information or evidence of the character described in section 2 of this chapter to be considered by the grand jury, shall charge the grand jury to inquire into violations of this chapter for the purpose of proper action.

588:8-a ATTORNEY GENERAL. At any time when the attorney general has information which he deems reasonable or reliable relating to violations of the provisions of this chapter he shall make full and complete investigation thereof and shall report to the general court the results of this investigation, together with his recommendations, if any, for legislation. In any investigation hereunder the attorney general or any duly authorized member of his staff is authorized to require by subpoena or otherwise the attendance of such witnesses and the production of such correspondence, books, papers and documents and to administer such oaths, and to take such testimony and to make such expenditures within the funds provided as he deems advisable. The provisions of section 7 of this chapter shall be inapplicable to the investigation provided for herein and the attorney general is hereby authorized to make public such information received by him, testimony given before him, and matters handled by him as he deems fit to effectuate the purposes hereof.

LOYALTY.

588:9 EMPLOYMENT. No subversive person, as defined in this chapter, shall be eligible for employment in, or appointment to any office, or any position of trust or profit in the government of, or in the administration of the business of this state, or of any county, municipality, or other political subdivision, of this state.

588:10 WRITTEN STATEMENTS REQUIRED. Every person and every board, commission, council, department, court or other agency of the state of New Hampshire, or any political subdivision thereof, who or which appoints or employs or supervises in any manner the appointment or employment of public officials or employees shall establish by rules, regulations or otherwise, procedures designed to ascertain before any person, including teachers, and other employees of any public educational institution in this state, is appointed or employed, that he or she as the case may be, is not a subversive person, and that there are no reasonable grounds to believe such persons are subversive persons. In the event such reasonable grounds exist, he or she as the case may be, shall not be appointed or employed. In securing any facts necessary to ascertain the information herein required, the applicant shall be required to sign a written statement containing answers to such inquiries as may be material, which statement shall contain notice that it is subject to the penalties of perjury.

588:11 EXCEPTIONS. The inquiries prescribed in section 10 other than the written statement to be executed by an applicant for employment, shall not be required as a prerequisite to the employment of any persons in the classification of laborers in any case in which the employing authority shall in his or its discretion determine and by rule or regulation specify the reasons why, the nature of the work to be performed is such that employment of persons as to whom there may be reasonable grounds to believe that they

are subversive persons as defined in this chapter will not be dangerous to the health of the citizens or the security of the government of the United States, the state of New Hampshire or any political subdivision thereof.

588:12 **PRESENT EMPLOYEES.** Every person, who on August 1, 1951 shall be in the employ of the state of New Hampshire or of any political subdivision thereof, other than those now holding elective office shall be required on or before October 1, 1951 to make a written statement which shall contain notice that it is subject to the penalties of perjury, that he or she is not a subversive person as defined in this chapter, namely, any person who commits, attempts to commit, or aids in the commission, or advocates, abets, advises or teaches by any means any person to commit, attempt to commit, or aid in the commission of any act intended to overthrow, destroy or alter, or to assist in the overthrow, destruction or alteration of, the constitutional form of the government of the United States, or of the state of New Hampshire, or any political subdivision of either of them, by force, or violence; or who is a member of a subversive organization or a foreign subversive organization, as more fully defined in this chapter. Such statement shall be prepared and execution required by every person and every board, commission, council, department, court, or other agency of the State of New Hampshire or any political subdivision thereof responsible for the supervision of employees under its jurisdiction. Any such person failing or refusing to execute such a statement or who admits he is a subversive person as defined in this chapter shall immediately be discharged.

588:13 **DISCHARGE OF PERSONNEL; HEARING.** Reasonable grounds on all the evidence to believe that any person is a subversive person, as defined in this chapter shall be cause for discharge from any appointive office or other position of profit or trust in the government of or in the

administration of the business of this state, or of any county, municipality or other political subdivision of this state, or any agency thereof. The personnel commission shall, by appropriate rules or regulations, prescribe that persons charged with being subversive persons, as defined in this chapter, shall be accorded notice and opportunity to be heard, in accordance with the procedures prescribed by law for discharges for other reasons. Every person and every board, commission, council, department, or other agency of the state of New Hampshire or any political subdivision thereof having responsibility for the appointment, employment or supervision of public employees not covered by the state classified service shall establish rules or procedures similar to those required herein for classified services for a hearing for any person charged with being a subversive person, as defined in this chapter after notice and opportunity to be heard. Every employing authority discharging any person pursuant to any provision of this chapter shall promptly report to the attorney general the fact of and the circumstances surrounding such discharge. A person discharged under the provisions of this section shall have the right within thirty days thereafter to appeal to the superior court of the county where such person may reside for a determination by such court (with the aid of a jury if the appellant so elects) as to whether or not the discharge appealed from was justified under the provisions of this act. The court shall speedily hear and determine such appeals, and from the judgment of the court, there shall be a further appeal to the supreme court of New Hampshire as in civil cases.

588:14 DECLARATIONS OF CANDIDATES. No person shall become a candidate for election to, nor qualify for, any public office under the election laws of this state unless he or she shall file with the declaration of candidacy, or prior to qualifying, an affidavit that he or she is not a subversive

person as defined in this chapter. No declaration of candidacy shall be received for filing by any town or city clerk or by the secretary of state unless accompanied by the affidavit aforesaid and there shall not be entered upon any ballot or voting machine at any election the name of the person who has failed or refused to make the affidavit aforesaid.

588:15 FALSE STATEMENTS. Every written statement made pursuant to this chapter by an applicant for appointment or employment, or by any employee shall be deemed to have been made under oath if it contains a declaration preceding the signature of the maker to the effect that it is made under the penalties of perjury. Any person who makes a material misstatement of fact (a) in any such written statement, or (b) in any affidavit made pursuant to the provisions of this chapter, or (c) under oath in any hearing conducted by any agency of the state, or of any of its political subdivisions, pursuant to this chapter, or (d) in any written statement by an applicant for appointment or employment or by an employee in any state aid institution of learning in this state, intended to determine whether or not such applicant or employee is a subversive person as defined in this chapter, which statement contains notice that it is subject to the penalties of perjury shall be subject to the penalties of perjury prescribed in chapter 587, RSA.

588:16 TITLE. This chapter may be cited as the "Subversive Activities Act of 1951."

Appendix B.

OPINION OF SUPREME COURT OF NEW HAMPSHIRE.

Merrimack,
No. 5298.

WILLIAM MAYNARD, ATTORNEY GENERAL

v.

HUGO DE GREGORY

Argued January 5, 1965.

Decided April 30, 1965.

Petition under RSA 491:19, 20 to compel the defendant to answer certain questions asked him in a legislative investigation of subversive activities by the Attorney General pursuant to the provisions of RSA 588:8-a (supp).

When directed by the Trial Court (*Loughlin, J.*) to answer the propounded questions, defendant refused. He informed the Court he was not invoking his privilege against self incrimination. The Court adjudged him in contempt and ordered him committed to jail for a period of one year or until he purged himself of contempt. However, he was released on his own recognizance pending this appeal.

William Maynard, Attorney General, *R. Peter Shapiro*, Assistant Attorney General, and *Joseph F. Gall*, Special Assistant to the Attorney General (*Messrs. Shapiro and Gall* orally) for the Attorney General.

Lawrence J. Walsh and *Howard S. Whiteside* (of Massachusetts) (*Mr. Whiteside* orally), for the defendant.

LAMPRON, J. The first issue raised by the defendant is whether under the circumstances of this case the Attorney General has power under RSA 588:8-a (supp) to question him and whether the Superior Court has power to commit him for his refusal to answer the questions asked.

RSA 588:8-c (supp) reads in part as follows: "At any time when the Attorney General has information which he deems reasonable or reliable relating to violations of the provisions of this chapter he shall make full and complete investigation thereof and shall report to the General Court the results of this investigation, together with his recommendations, if any, for legislation."

We held in *Wyman v. De Gregory*, 103 N.H. 214, 216, 217, that this "statute does not require that there must be a violation of law before the legislative investigation can be set in motion. It only requires that there be reasonable and reliable information 'relating' to violations of the provisions of RSA Ch. 588" relating to subversive activities. This judgment was affirmed by the United States Supreme Court. *De Gregory v. Attorney General of New Hampshire*, 368 U.S. 19. That Court, as recently as March, 1963, reaffirmed the broad inherent power of a Legislature to conduct investigations "concerning the administration of existing laws as well as proposed or possibly needed statutes." *Gibson v. Florida Legislative Investigation Com.*, 372 U.S. 539, 545. See Annot. 3 L. Ed. 2d 1647, 1650.

The defendant argues, however, that the Attorney General did not comply with RSA 588:8-a (supp) in that he failed to show (1) that he "has information which he deems reasonable or reliable relating to violations of the provisions of" RSA ch. 588, and (2) that he has reasonable cause to believe that the defendant has evidence pertinent to the subject under investigation.

It has long been recognized that the tenets of the Communist Party include the overthrow of government by force and violence. *Nelson v. Wyman*, 99 N.H. 33, 50; *Barenblatt v. United States*, 360 U.S. 109, 128. That the State of New Hampshire has an interest in the preservation of its government against the menace of Communist subversion is firmly established. *Nelson v. Wyman*, *supra*;

Gibson v. Florida Legislative Investigation Com., 372 U.S. 539, 547. Furthermore our Legislature has manifested a continuing concern to be kept informed by its investigating committee, the Attorney General, as to the need of "further legislation in the field of subversive activities." *Wyman v. De Gregory*, 103 N.H. 214, 217; RSA 588:8-a (supp); Laws 1961, 224:1 (p. 311) and 225:1 (p. 402); Laws 1963, 198:1 (p. 201) and 199:1 (p. 298).

In the present proceeding instituted in 1963 the Attorney General introduced in evidence a report to the Legislature, made by a prior Attorney General, showing the existence of a Communist Party and Communist influence in New Hampshire and the probable continuance of such activities in our state. Report of the Attorney General to New Hampshire General Court (January 5, 1955). In prior proceedings beginning in February 1960, the Attorney General attempted to obtain information from the defendant, which he is still seeking in the present proceedings. We hold that given the nature of the Communist movement and its mode of operation the above report could constitute information which the Attorney General could deem reasonable or reliable relating to violations of RSA ch. 588 and the proper basis for his present investigation of subversive activities on behalf of the Legislature. *Wyman v. De Gregory*, 103 N.H. 214, 217; *De Gregory v. Attorney General of New Hampshire*, 368 U.S. 19; *Gibson v. Florida Legislative Investigation Com.*, 372 U.S. 539, 547.

It was also stated in the above report that the then Attorney General had reliable information concerning defendant's participation in the Communist Party as an officer, a presiding officer at conferences in New Hampshire, and in numerous other party activities. (pp. 204-206). When questioned by the Attorney General on November 22, 1963, and also in the Superior Court in the hearing which is the basis of this appeal, the defendant made the following state-

ment: "I am not now a member of the Communist Party and have not been at any time since the authority you have cited, RSA 588:8-a; that I have no knowledge of any Communist activities in New Hampshire during this period or of any violations of RSA 588 during this period of six and one-half years." Even if taken at its face value, this statement does not render otherwise proper and pertinent information regarding his prior contacts and involvements with the Communist Party and its members in this State beyond the legitimate interest and jurisdiction of the Attorney General acting as the investigating committee of the Legislature. *Nelson v. Wyman*, 99 N.H. 33, 39; *Uphaus v. Wyman*, 360 U.S. 72, 78.

We hold, as we did in *Wyman v. De Gregory*, 103 N.H. 214, 217, that the Attorney General had reasonable and reliable information relating to violations of RSA ch. 588 which provided a valid and relevant basis for the investigation of the defendant. We hold further that the Superior Court could properly hold the defendant in contempt under RSA 491:19, 20 for his refusal to answer whether he was ever a member, a paid member, or an officer of the Communist Party; if he ever had access to or control of membership or financial records of the Party in New Hampshire or attended Party meetings; the extent of control of the Party activities in this state exerted by a Party unit in Boston of which he is alleged to have been an officer; if he attended Party meetings in New Hampshire where advocacy of the overthrow of the Government took place or persons conspired to so do; also questions as to his knowledge about the books, records or files of the Party in this state and about his contributions to its support. *Uphaus v. Wyman*, 360 U.S. 72; *Barenblatt v. United States*, 360 U.S. 109; *Wilkinson v. United States*, 365 U.S. 399; *Braden v. United States*, 365 U.S. 431.

Defendant's last contention is that if RSA 588:8-a (supp) is held to empower the Attorney General in the

circumstances of this case, to require defendant to answer questions, this statute is in contravention of the Fourteenth Amendment. This is for the reason, in the words of his brief, "that the danger to the State, which must be present to warrant action under a statute like c. 588, s. 8A has not been shown to exist at any time during plaintiff's current attempts to question defendant or in fact for years prior thereto."

As we have stated previously in this opinion the investigation of Communist Party activities in this state is within the power of our Legislature and the authority granted to its investigating committee, the Attorney General. Because of the nature of the Communist Party it is a proper and permissible subject of constant scrutiny by the Legislature. *Gibson v. Florida Legislative Investigation Com.*, 372 U.S. 539, 547. A defendant's own past or present membership in the Party is within the purview of such an investigation. *Id.* The nexus between the defendant and subversive activities disclosed by the report offered in evidence by the Attorney General and properly admitted by the Court, furnished adequate justification for his present interrogation of the defendant. The decisions in No. 44 *American Committee for Protection of Foreign Born v. Subversive Activities Control Board* [380 U.S. 503], 33 L. W. 4336, and No. 65 *Veterans of Abraham Lincoln Brigade v. Subversive Activities Control Board* [380 U.S. 513], 33 L. W. 4339 (decided April 26, 1965) are not apposite to the situation existing in this case. This exercise by the State of its power adequately to inform itself in order to act and protect its legitimate and vital interests has not been "pressed, in this instance, to a point where it has come into fatal collision with the overriding constitutionally protected rights" of the defendant. *Uphaus v. Wyman*, 360 U.S. 72, 81.

Exceptions overruled.

DUNCAN, J., concurred in the result; the others concurred.

DUNCAN, J., *concurring*: The 1957 statute, under which this proceeding was instituted in 1963, directs the Attorney General to make an investigation of "violations" of the "Subversive Activities Act of 1951," or of "information . . . relating to" such violations. RSA 588:8-a (supp). Section 8-a and my views concerning it have not changed since it was under consideration four years ago in a prior proceeding against this defendant. See *Wyman v. DeGregory*, 103 N.H. 214, 218-219. The foundation for the most recent order that the defendant answer questions propounded by the Attorney General is once again the report made by Attorney General Wyman to the Legislature in 1955. However, I am bound to accept as decided law the interpretation placed upon § 8-a, *supra*, by a majority of this court in *Wyman v. DeGregory*, *supra*, since affirmed by *DeGregory v. Attorney General of New Hampshire*, 368 U.S. 19, and therefore concur in the order entered today.